

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA)
)
)
v.) CRIMINAL NO. 04-10156 WGY
)
JOHN CHU)
)

DEFENDANT'S REQUEST FOR INSTRUCTIONS

Defendant John Chu respectfully requests the following instructions:

1. Request for Instruction Re: Certificate

The Court has stated its intention to instruct the jury that it is up to them to find what the State Department document means. Defendant maintains that the jury should not be permitted to find a fact unsupported in the evidence, namely whether the certificate and attached letter related to the period charged in the indictment (March 25-May 6, 2004). Defendant renews his objections, among them that such an instruction would violate Crawford v. Washington, 124 S. Ct. 1354 (2004).

Defendant submits that the Court should instruct the jury as follows:

Proposed Instruction

The government must prove beyond a reasonable doubt that this TWT presented at trial was a defense article at the time charged in the indictment (March 25 to May 6, 2004). The only evidence relating to whether this TWT is a defense article is Exhibit 33. You must examine that document to see if it provides evidence that the TWT was a defense article at the time relevant here, namely March 25, 2004 to May 6, 2004. If you find that the document has not stated that this TWT was a defense article at the time charged in

count 1 (March 25-May 6, 2004), you must find that the government has not proven its case beyond a reasonable doubt and find the defendant not guilty.

2. Request for Instruction: Statements by Undercover Agent

Statements by an undercover agent about whether an article is restricted under the USML, or whether it requires an export license, or statements in an email that a transaction is subject to government restriction, are not evidence that something is or is not subject to the Arms Export Control Act, or is or is not a defense article.

3. The Court Should Explain to the Jury that Many of the Instructions Given at the Beginning of the Case Are No Longer Applicable

The Court should notify the jury that many of the instructions given at the start of the case, bearing on count 2 and relating to aiding and abetting, attempt, and so forth, are no longer applicable.

JOHN CHU
By his attorney,

/s/

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CERTIFICATE OF SERVICE

I, Charles P. McGinty, hereby certify that a true copy of the above document was served upon Assistant United States Attorney Gregory Moffatt by delivery on September 12, 2005.

Charles P. McGinty